

**TAB C**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: CHAPTER 11  
W.R. GRACE & CO., et al., Case No. 01-01139 (JFK)  
Debtors. (Jointly Administered)  
Re: Docket No. 13406

DEPOSITION OF  
GRAEME STEUART MEW

May 11, 2007

11:00 a.m.

600 Peachtree Street  
Atlanta, Georgia

Abigail M. Pace, RPR, CCR-B-1484

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(Original Exhibits 1 through 6 have been  
attached to the original transcript.)

1 (Reporter disclosure made pursuant to  
2 Article 8.B. of the Rules and Regulations of the  
3 Board of Court Reporting of the Judicial Council  
4 of Georgia.)

5 MR. SPEIGHTS: Mr. Cameron, before you  
6 start this deposition I had agreed on the record  
7 at a previous hearing that I did not object to  
8 your taking a deposition of Mr. Mew for purposes  
9 of the summary judgment motion that you had  
10 filed in light of objections I raised about a  
11 report which was not notarized. I just want to  
12 confirm for the record that we have agreed that  
13 this deposition is not to be used in the event  
14 that the summary judgment motion is denied and  
15 we proceed to a trial on the statute of  
16 limitations in light of the court's ruling that  
17 experts must testify live at trial.

18 MR. CAMERON: I believe that he will  
19 clearly be there live for cross-examination. We  
20 would expect him to be there live for direct  
21 also but as you know there was some talk in the  
22 procedures of submitting declarations in lieu of  
23 live testimony on direct. That's not been  
24 decided but if the parties go that route he will  
25 be there live, certainly be there live for

1 cross. I just don't know how it's going to  
2 shake out.

3 But if your concern is that by not  
4 crossing him now you wouldn't have the  
5 opportunity to cross him at that hearing, I  
6 agree with you in that regard, he would be there  
7 live for cross-examination in a hearing if  
8 summary judgment is not granted.

9 MR. SPEIGHTS: Thank you, sir.

10 GRAEME STEUART MEW,  
11 having been first duly sworn, was examined and  
12 testified as follows:

13 EXAMINATION

14 BY MR. CAMERON:

15 Q. Mr. Mew, would you state your name for the  
16 record, please.

17 A. Yes, it's Graeme Steuart Mew.

18 Q. Where are you employed?

19 A. I'm a partner with Nicholl Paskell-Mede in  
20 Toronto.

21 Q. And how long have you been practicing law?

22 A. I've been practicing law since -- I was  
23 called to the bar in 1982 in England and Wales but  
24 didn't start practicing as a barrister until January  
25 '84, so I guess that's 23 years now.

1 Q. And how long have you been practicing law  
2 in Canada?

3 A. 20 years.

4 Q. And can you tell the court generally what  
5 type of law you have practiced over the last 20 years  
6 in Canada?

7 A. Yes. The focus of my practice has been  
8 civil and commercial litigation with an emphasis on  
9 work that is generated by insurers and indeed  
10 insurance contract law. I have also done some  
11 criminal litigation. I've done some administrative  
12 litigation and I've developed a practice in sports  
13 law. I've covered most fields of insured activity  
14 whether it be products liability, fiduciary  
15 responsibilities, directors and officers, professional  
16 liability, class action defense, those sorts of  
17 things. And I've also got an active practice as an  
18 intermediary as an arbitrator and mediator.

19 Q. And have you received any recognition from  
20 peers or professional organizations as a lawyer?

21 A. Yes, I've been ranked by a couple of  
22 commercial entities that do these things. One is  
23 called Lexpert. They have a directory of leading  
24 practitioners in various fields and they have ranked  
25 me as a leading practitioner in commercial insurance



1 litigation and quite recently the Canadian sister of  
2 an American publication has been established called  
3 Best Lawyers in Canada and I've been ranked in the  
4 field of insurance lawyer as one of the, quotes, best  
5 lawyers in Canada.

6 (Exhibit 1 was marked for identification.)

7 Q. (By Mr. Cameron) Okay. Mr. Mew, I show  
8 you what's been marked as Exhibit 1. Is that a true  
9 and correct copy of your current CV?

10 A. Yes, the Best Lawyers in Canada thing  
11 happened after this was prepared but other than that  
12 it's pretty much up to date.

13 Q. Okay. Could you briefly describe for the  
14 court your educational background.

15 A. Yes, I graduated from high school in  
16 England in 1977 and went as is the custom in that  
17 country directly to law school. I did a three-year  
18 honors degree in law at what is now as Kingston  
19 University. I then took a sabbatical year and after  
20 that I went to the Inns of Court School of Law, which  
21 at that time was the place that one had to go in order  
22 to become a barrister. That was a ten-month  
23 vocational course in law and the practice of law. I  
24 then undertook pupillage, which is a process of  
25 internship at the English bar a total of 12 months,

1 and as a result of doing that was entitled to call  
2 myself and practice as a barrister at law.

3 Q. And when was that?

4 A. I was called to the English bar in 1982 by  
5 the Honourable Society of the Middle Temple, which is  
6 one of the bodies that has the right to call someone  
7 to the bar. But this is a quirk of the English  
8 practice you're not entitled to practice as a  
9 barrister even though you have the title of barrister  
10 until you have done that period of internship or  
11 pupillage as we call it. 'And I did that between 1982  
12 and 1984 and actually spent some of that time in  
13 Canada, which didn't count towards my pupillage.

14 I then immigrated to Canada largely for  
15 personal reasons at the end of 1984. Despite our  
16 common legal heritage I was not automatically entitled  
17 to practice law in Canada and had to, in fact, do some  
18 more Canadian legal training. I obtained a bachelor  
19 of laws degree from the University of Windsor,  
20 Ontario, in 1986 and then undertook a short period of  
21 what in Canada is called articles of clerkship for  
22 four months and then I went to the bar admission  
23 course at the Law Society of Upper Canada, which is a  
24 six-month vocational training course and was called to  
25 the Ontario Bar in April of 1987.

1 Q. Do you have any other legal training after  
2 becoming a member of the bar in Canada?

3 A. Yes. I've undertaken formal training as  
4 an arbitrator and a mediator. I did the international  
5 special fellowship course of the Chartered Institute  
6 of Arbitrators in the Netherlands and I took a course  
7 in the Netherlands in 1993 and then I enrolled in  
8 courses validated by the University of Windsor in  
9 alternative dispute resolution in 1996 and I also did  
10 some further mediation training in England in 1999 at  
11 the Center for Effective Dispute Resolution who  
12 certified me as a mediator.

13 Q. And following those courses do you receive  
14 a certification or accreditation?

15 A. Yes.

16 Q. Have you written or published on legal  
17 issues in Canada?

18 A. Yes, I've written quite a number of  
19 articles over the years.

20 (Exhibit 2 was marked for identification.)

21 Q. (By Mr. Cameron) I show you what's been  
22 marked as Exhibit 2 and is that a true and correct  
23 copy of your list of publications?

24 A. Yes.

25 Q. And is this the list that was attached to

1 your expert report in this case?

2 A. Yes.

3 Q. Have you written and spoken on law  
4 limitations in various Canadian provinces and  
5 territories?

6 A. Yes.

7 Q. And can you give the court some examples?

8 A. I've spoken at, I lose count of the  
9 number, but many continuing legal education programs  
10 administered by either the Canadian Bar Association,  
11 the Ontario Bar Association, the Law Society of Upper  
12 Canada, the Advocate Society and indeed the Ontario  
13 Trial Lawyers Association, which is the Canadian  
14 branch of the American Trial Lawyers Association, the  
15 plaintiff's bar. I've spoken at various conferences  
16 and continuing legal education programs put on by  
17 those entities.

18 Q. And how about publications? Do you have  
19 any publications?

20 A. On limitations?

21 Q. Yes.

22 A. I've written a book The Law of  
23 Limitations, which has gone through two editions and  
24 a number of the articles that I've written for  
25 publication have been on the subject of limitations.

1 Q. And what was the first edition of the book  
2 you wrote?

3 A. It was published in 1991.

4 Q. And when was the second edition?

5 A. It was published in 2004.

6 Q. And are you working on a third edition?

7 A. I'm about to.

8 Q. Okay. And is that textbook used  
9 throughout Canada?

10 A. Except in Quebec, yes.

11 Q. Okay. Are there other textbooks in print  
12 in Canada on the law of limitations?

13 A. There are none of national scope. There  
14 is a publication in Ontario that the Ontario Bar  
15 Association has put out which deals with Ontario law  
16 of limitations and there are various loosely  
17 limitation services that are not texts as such but  
18 reference sources for limitations. But I believe mine  
19 is the only one of national scope.

20 Q. And has your textbook been cited by  
21 Canadian courts?

22 A. Yes.

23 (Exhibit 3 was marked for identification.)

24 Q. (By Mr. Cameron) I show you what's been  
25 marked as Exhibit 3. Is that a true and correct copy

1 of the list of cases in which your book has been  
2 cited?

3 A. It is as of the date that I prepared my  
4 report. I asked for a shepardizing or a database  
5 search at any rate to be run of where my book had been  
6 cited and this was the result of that.

7 Q. And is Exhibit 3 what was attached to your  
8 expert report in this case?

9 A. Yes.

10 Q. Can you also tell the court about  
11 instances where you've been retained to consult on  
12 limitations issues?

13 A. Yes. I've always done professional  
14 indemnity work as an advocate and I have been  
15 regularly retained by the Professional Indemnity  
16 Insurer of Lawyers in Ontario to assist lawyers and  
17 their insurer with problems that they have run into on  
18 limitation issues. That's resulted in often assisting  
19 in what are called repair actions where I have gone to  
20 court to try and repair the effects of a missed  
21 limitation period or limitation oversight and  
22 obviously I've also written opinions for the clients  
23 for the insurers on limitation issues.

24 Q. Okay. Have you encountered limitation  
25 issues in your practice as a mediator and arbitrator?

1 A. Frequently.

2 Q. Mr. Mew, can you tell the court what you  
3 were retained to do in this matter?

4 A. I was asked to provide an opinion on the  
5 Canadian Law of Limitations as it pertained to a fact  
6 scenario that was presented to me. And in particular  
7 to consider how the Canadian Law of Limitations would  
8 affect the claims that had been advanced against Grace  
9 by or on behalf of various Canadian claimants.

10 Q. Can you tell the court what general  
11 assumptions you made in rendering your opinions?

12 A. Well I was given a number of assumptions.  
13 I'm not sure I can accurately recall all of them  
14 without looking at my report. But one was the  
15 assumption of when the proceeding would be, what the  
16 date was when a proceeding would have been commenced  
17 or would have been deemed to have been commenced. And  
18 I believe that was April the 2nd, 2001, which was the  
19 date that Grace filed for bankruptcy.

20 The other assumption that I was asked to  
21 assume that the impugned product Mono-Kote 3 had been  
22 applied and put into buildings in Canada and I was  
23 given some information as to when that was done. You  
24 may remind me of other things, other assumptions I  
25 made that are set out in my opinion.

1 Q. Did you reach any conclusions or opinions  
2 to a reasonable degree of professional certainty based  
3 on your review?

4 A. I did, yes.

5 Q. And did you prepare, sign and issue an  
6 expert report?

7 A. Yes, I did.

8 (Exhibit 4 was marked for identification.)

9 Q. (By Mr. Cameron) I'm going to show you  
10 what's been marked as Exhibit 4 and is that a true and  
11 correct copy of the report that you prepared and  
12 executed in this case?

13 A. Yes, it is.

14 Q. And when is that report? Is that report  
15 dated?

16 A. Yes, it was the 21st of December 2006.

17 Q. Okay. Can you tell the court generally  
18 what opinions you have reached concerning the  
19 application of the law of limitations in Canada to the  
20 asbestos property claims in this bankruptcy?

21 A. I have concluded based on the information  
22 provided to me that the claims, all of the claims and  
23 I accept -- I haven't proffered an expert opinion on  
24 the law of the province of Quebec but with that caveat  
25 I've expressed the opinion that all of the claims



1 would be statute barred under Canadian law.

2 Q. And under what limitations would they be  
3 barred?

4 A. Well, in my report I describe two types of  
5 limitation periods that are contained in our statutes  
6 of limitation and each province has its own statute of  
7 limitations. Most of those statutes of limitations  
8 contain what's called an ultimate or longstop  
9 limitation period. And I've conclude that those  
10 provinces where there is an ultimate limitation period  
11 that the claims would be barred by those ultimate  
12 limitation periods.

13 All of the Canadian limitation statutes  
14 also contain what I have described as normal  
15 limitation periods, sometimes in the cases you seem to  
16 refer to as general limitation periods, and I have  
17 concluded that all of the claims would also be barred  
18 by operation of those general limitation periods.

19 MR. SPEIGHTS: I'm going to object and  
20 move to strike at this moment, although I really  
21 don't think it's required under the rules. I'm  
22 going to move to strike the testimony relating  
23 to the ultimate statute of limitations on the  
24 grounds that that is not the subject of Grace's  
25 objection. We previously discussed that on the

1 record at the deposition immediately preceding  
2 this present deposition. And I will object to  
3 all further testimony about the ultimate statute  
4 of limitations and incorporate by reference my  
5 comments at that previous deposition where I  
6 reserved the right to depose Mr. Mew again in  
7 the event that Grace's motion to amend its  
8 objections is granted.

9 And, again, while that's not the form of  
10 the question I just want to make it clear for  
11 the record and that objection will continue  
12 throughout the line of testimony in which  
13 Mr. Mew is going to address the ultimate statute  
14 of limitations.

15 Q. (By Mr. Cameron) Mr. Mew, does your  
16 report address the issue of ultimate limitations?

17 A. Yes, it does.

18 Q. And when was that report issued?

19 A. As I've already indicated it was signed on  
20 the 21st of December 2006.

21 Q. Okay. Do you recall participating in a  
22 deposition taken by Mr. Speights with respect to your  
23 report?

24 A. I remember it well.

25 Q. And when was that taken? Do you recall?

1 A. It was taken in March or was it taken in  
2 February? It was taken in March, yes, in Toronto.

3 Q. Now with respect to the ultimate  
4 limitations period do you have an opinion as to when  
5 those periods begin to run?

6 A. Yes, I do.

7 Q. What is that opinion?

8 A. In the provinces that have ultimate  
9 limitation periods those limitation periods begin to  
10 run on the date on which the wrong occurs.

11 Q. And for the asbestos in building claims do  
12 you have an opinion as to when those ultimate  
13 limitation periods would begin to run?

14 A. Yes, I do.

15 Q. What is that opinion?

16 A. They would begin to run on the date of  
17 installation.

18 Q. Which Canadian provinces that you  
19 addressed have ultimate limitation periods in their  
20 limitation statutes?

21 A. At the material term it would have been it  
22 was British Columbia, Alberta, Manitoba and  
23 Newfoundland. Ontario now has an ultimate limitation  
24 period but it did not until January the 1st, 2004.

25 Q. Okay. With respect to Alberta do you have

1 an opinion as to which claims would be barred by the  
2 ultimate limitations period?

3 A. Any claim where the installation was more  
4 than ten years before the date of commencement of  
5 proceedings or the date on which proceedings are  
6 deemed to have been commenced that would be barred.

7 Q. And by the date of commencement are you  
8 using the April 2, 2001 date?

9 A. Yeah.

10 Q. So using that date which claims in your  
11 opinion in Alberta would be barred by the ultimate  
12 limitations period?

13 A. Any installation prior to the 2nd of April  
14 1991.

15 Q. Okay. With respect to the other provinces  
16 that you identified do you have an opinion as to which  
17 claim would be barred by the ultimate limitations  
18 periods in their limitation statutes?

19 A. Yes, in each of those other statutes the  
20 ultimate limitation period is 30 years so that going  
21 back 30 years from April the 2nd, 2001, would take you  
22 to April the 2nd, 1971.

23 Q. And so which claims in your opinion would  
24 be barred by the ultimate limitations periods in those  
25 respective provinces statutes?

1           A.     Any claim in which is installation was  
2 before the 2nd of April 1971.

3           Q.     Did you come to a conclusion or opinion  
4 with respect whether the normal limitations periods in  
5 the provinces limitations statutes would bar any of  
6 the Canadian claims?

7           A.     Yes, I did.

8           Q.     Can you tell me what opinions you reached  
9 with respect to those?

10          A.     It was my opinion that -- well, in each of  
11 the provinces except Alberta the applicable limitation  
12 period, most likely applicable limitation period is  
13 six years. So my conclusion was that any installation  
14 that occurred before six years prior to April the 2nd,  
15 2001, would be statute barred. So any installation  
16 prior to the 2nd of April 1995 would be statute barred  
17 with the exception of the province of Alberta where  
18 the limitation period is two years. So that would be  
19 any installation prior to the 2nd of April 1999.

20          Q.     And could you provide to the court a brief  
21 overview of the Canadian legal system the way it's set  
22 up and the way it works?

23          A.     Yes. It's somewhat different to the U.S.  
24 legal system although like in the U.S. we have a  
25 federal system of government. Our courts in each

1 province have judges who are federally appointed by  
2 the government of Canada so that a judge in the  
3 Superior Court, that is, a trial court in Newfoundland  
4 or in British Columbia or anywhere else in Canada is  
5 appointed by the federal government is tenured and  
6 holds very much the same position as I understand the  
7 federal judge would hold in the United States.

8 Q. Do judges in the Canadian legal system --  
9 I'm sorry, are those superior court judges?

10 A. Different names in different provinces.  
11 In Ontario it's the Superior Court. In British  
12 Columbia it's called the Supreme Court. In Alberta  
13 and Saskatchewan it's called the, and I think  
14 Manitoba, it's called the Court of Queens Bench.  
15 Newfoundland it's called the Supreme Court so  
16 different names but, yes, Superior Court would be the  
17 sort of general nomenclature.

18 Q. And are those courts that you just  
19 referenced are those what we refer to as the trial  
20 court level?

21 A. Yes.

22 Q. And is there an appellate, I assume  
23 there's an appellate system in Canada?

24 A. Yes. Each province has a Court of Appeal  
25 and the judges of that court are similarly appointed

1 by the federal government. And, indeed, it's possible  
2 for a judge appointed to the Superior Court to sit at  
3 ad hoc as a member of the Court of Appeal.

4 Q. So is that an intermediate appellate  
5 court?

6 A. In 99.9 percent of cases the Court of  
7 Appeal of the province is the final Court of Appeal.  
8 As in United States we have a Supreme Court of Canada  
9 but the Supreme Court of Canada is highly selective in  
10 the cases that it hears. You have to seek leave to  
11 have a case heard in the Supreme Court of Canada and  
12 statistically it's rarely granted.

13 Q. Now can you explain just generally how  
14 limitation periods in the Canadian limitation statutes  
15 work in Canada?

16 A. Yes. The limitation period is a period of  
17 time within which a plaintiff must commence an action  
18 so that if a plaintiff fails to commence an action  
19 within a period of limitation the plaintiff is  
20 thereafter barred from obtaining a remedy.

21 Q. And within the Canadian limitation  
22 statutes generally how many types of limitation  
23 periods are there?

24 A. There are general limitation periods which  
25 apply to define causes of action or define classes of

1 claims and there are ultimate limitation periods which  
2 generally apply across the board regardless of what  
3 the underlying general limitation period is.

4 Q. Okay. And what's the general difference  
5 between the two?

6 A. Well, one is much longer than the other.  
7 The ultimate limitation period is 10 years in Alberta,  
8 15 years in Ontario and 30 years elsewhere. But the  
9 other important distinguishing feature is when time  
10 starts to run from. The ultimate limitation period  
11 runs from the date of the wrong whereas the general  
12 limitation period will in some cases run from a later  
13 date than the date of the wrong. I'm sure we'll  
14 discuss the discoverability principle, which is  
15 usually a factor of delaying the running of time but  
16 there are others.

17 Q. And are the normal limitation periods in  
18 Canada set forth in individual provinces limitations  
19 acts? Is that the way it's set up?

20 A. Yes, for the most part it is. There are  
21 in some provinces special acts, you know, a Municipal  
22 Act or an act that applies to a particular  
23 municipality or a particular profession. For example,  
24 they may have a different limitation period but the  
25 general limitation periods are stated in the statutes



1 of limitation.

2 Q. And are the ultimate limitation periods in  
3 Canada also set forth in those same limitation acts?

4 A. Yes.

5 Q. Okay. Do you have what is referred to as  
6 statutes of repose in Canada?

7 A. It's not a Canadian term so strictly  
8 speaking, no, we don't have separate statutes of  
9 repose.

10 Q. Mr. Mew, can you explain to the court how,  
11 if at all, the characterization of the asbestos  
12 property damage claims against Grace would impact the  
13 application of the statute of limitations in Canada?

14 A. Yes. There are within, as I just  
15 mentioned, within the limitations acts at least some  
16 of the limitation acts different limitation periods  
17 depending on the cause of action whether it's a  
18 contract action, tort action or defamation action or  
19 different provinces have different degrees of breaking  
20 down particular causes of action. But the  
21 characterization classification of the cause of action  
22 has an impact on how long the limitation period is for  
23 the normal limitation periods. It's not of any  
24 significance with respect to the ultimate limitation  
25 period.

1 Q. And can you tell the court in your opinion  
2 how claims like the asbestos property damage claims at  
3 issue in the Grace bankruptcy would be characterized  
4 in Canada?

5 A. Yes. Since the Supreme Court of Canada's  
6 decision in what's known as the Winnipeg Condominium  
7 case, which firmly established the concept of pure  
8 economic losses of tort, cases such as the claims  
9 against Grace have been characterized as pure economic  
10 loss cases.

11 Q. Okay. And you referred to the Winnipeg  
12 Condominium case?

13 A. Yes.

14 Q. And what's that? What is that case?

15 A. It's a decision of the Supreme Court of  
16 Canada and it dealt with whether or not a plaintiff  
17 could recover damages, prosecute an action and recover  
18 damages for the installation of allegedly hazardous or  
19 allegedly, yeah, allegedly hazardous material in a  
20 building without the need to prove actual damage or  
21 injury, damage to property or injury to persons.

22 Q. Okay. And has the holding of the Supreme  
23 Court of Canada in Winnipeg Condominium been applied  
24 to an asbestos in buildings case?

25 A. Yes, it has.

1 Q. What case is that?

2 A. It's the Privest case in British Columbia.

3 Q. Can you tell me what claims were involved  
4 in the Privest case?

5 A. Well it bore some similarities to the  
6 claims that are made here. It was a claim that  
7 involved the installation of asbestos-containing  
8 fireproofing application in a building and a claim by  
9 the building owner for the damages resulting from the  
10 ripping out of and replacement of that product.

11 Q. And do you know who was alleged to have  
12 manufactured that product that was involved in  
13 Privest?

14 A. I believe it was your client.

15 Q. Do you know what types of claims or causes  
16 of action were brought in the Privest case?

17 A. Yes, there was a fairly sort of broad  
18 range of causes of actions: misrepresentation,  
19 failure to warn, sort of straightforward negligence  
20 nuisance. I believe there were others.

21 Q. Okay. Did the Privest case involve a  
22 limitations period defense that was asserted by Grace?

23 A. Yes.

24 Q. And did the Privest court characterize the  
25 case for purposes of examining limitations period

1 issue?

2 A. I'm sorry, can you repeat the question.

3 Q. Did the court characterize what type of  
4 claim it was to analyze the limitations period issue?

5 A. Yes. The court essentially said  
6 regardless of what nomenclature you use or what tag  
7 you use that all of the claims boiled down to claims  
8 for pure economic loss.

9 Q. And did the Privest court determine when  
10 the limitations period began to run?

11 A. Yes.

12 Q. And what did the Privest court determine?

13 A. It determined that the limitation period  
14 began to run on the date of installation.

15 Q. And this was at the trial court level; is  
16 that correct?

17 A. Yes.

18 Q. And when was the Privest case decided at  
19 the trial court level, do you recall?

20 A. 1994 or '5.

21 Q. You can refer to your report if you need.

22 A. I am referring to my report. 1995.

23 Q. And to your knowledge, Mr. Mew, is the  
24 Privest court's conclusion or the conclusion at the  
25 Supreme Court of Canada is a pure economic loss

1 analysis in Winnipeg Condominium applies to the claims  
2 involving asbestos-containing materials in buildings  
3 ever been rejected by any Canadian court?

4 MR. SPEIGHTS: I'm going to object to the  
5 compound question. You asked if Privest and  
6 Winnipeg. You've asked him a compound question.  
7 I object to the form as being compound.

8 Q. (By Mr. Cameron) To your knowledge,  
9 Mr. Mew, has the Privest court's conclusion, okay,  
10 that the Supreme Court of Canada's pure economic loss  
11 analysis in Winnipeg Condominium applied to claims  
12 involving asbestos-containing materials in buildings  
13 has ever been rejected by any Canadian court?

14 A. I'm not aware of any case in which it's  
15 been rejected.

16 Q. Was the Privest court's decision affirmed  
17 by the British Columbia Court of Appeal?

18 A. Yes, it was.

19 Q. And what action, if any, did the Supreme  
20 Court of Canada take?

21 A. The plaintiffs sought leave to appeal to  
22 the Supreme Court of Canada. That application was  
23 denied.

24 Q. Could you explain briefly, Mr. Mew, what  
25 the discoverability principle you referred to earlier

1 in the Canadian limitation law is?

2 A. Yes. It's essentially a rule of statutory  
3 construction which holds that limitation period  
4 doesn't start to run against a plaintiff or a claimant  
5 until the material facts upon which the claim or the  
6 cause of action is based on or been discovered or  
7 brought with the exercise of reasonable diligence to  
8 have been discovered.

9 Q. Is the discoverability principle  
10 applicable to postpone the running of an ultimate  
11 limitations period?

12 A. No.

13 Q. Can you explain why not?

14 A. Well the language of the ultimate  
15 limitation periods the ultimate limitation statutes  
16 themselves and the legislative intent is that time  
17 starts to run from the date of the event so that the  
18 statutory, either the common law statutory  
19 discoverability principles, which are used as I  
20 indicated as aids to construction, don't apply in an  
21 ultimate limitation situation. I think it's important  
22 to note that in each statute in which there is an  
23 ultimate limitation period the discoverability  
24 principle which evolved originally as a common law  
25 principle, has been reformulated into statutory

1 language and the legislation in each case makes it  
2 clear that the discoverability principle has no impact  
3 on the ultimate limitation.

4 Q. Prior to the legislative enactments when  
5 it was just under common law was the discoverability  
6 principle applicable to ultimate limitation periods?

7 A. I can answer that by saying that with the  
8 exception of British Columbia there were no ultimate  
9 limitation periods at the time that the common law  
10 discoverability rule evolved. It really only evolved  
11 as a rule of construction in the mid eighties with two  
12 decisions of the Supreme Court of Canada. British  
13 Columbia has always had something called postponement,  
14 which is their version of the discoverability  
15 principle.

16 Q. Is the discoverability principle  
17 applicable to postpone the riding of the normal  
18 limitations period?

19 A. Yes.

20 Q. Okay. And in cases where the  
21 discoverability principle can be invoked can you  
22 explain generally what the defendant must do to  
23 establish the limitations defense in Canada?

24 A. Yes. The defendant must plead the  
25 limitations defense and will typically do so in any

1 case where the action has been commenced more than --  
2 has been commenced after the limitation period has  
3 appeared to have expired. And typically what will  
4 happen if the limitation period is six years and the  
5 claim has been commenced the action has been commenced  
6 more than six years after the events giving rise to  
7 the claim the defendant will plead a limitation  
8 defense.

9 Q. Okay. With our claims at issue here what  
10 would Grace have to show to establish a limitations  
11 defense in Canada?

12 A. They would simply have to plead that the  
13 installation occurred, if it was in Alberta, more than  
14 two years before the action was commenced and if it  
15 was in any other province more than six years before  
16 the action was commenced.

17 Q. Now once that showing is made does the  
18 burden shift to the plaintiff or the claimant?

19 MR. SPEIGHTS: Objection to leading. You  
20 can go ahead and answer.

21 Q. (By Mr. Cameron) You can answer.

22 A. If a plaintiff wishes to defeat a  
23 limitation defense the plaintiff should deliver a  
24 pleading called a reply and the plaintiff would be  
25 required to establish that through the operation of



1 the discoverability principle or some other aspect of  
2 the law of limitations. But the running of time  
3 should be taken to have started later than the date of  
4 the wrong giving rise to the claim.

5 Q. Whose burden is it to establish the  
6 applicability of the discoverability principle?

7 A. It's the plaintiff's burden.

8 Q. And has the reasonable diligence standard  
9 been applied to claims for pure economic loss  
10 involving asbestos in buildings?

11 A. Yes.

12 Q. And what case was that in?

13 A. Well Privest obviously.

14 Q. Can you explain what the Privest court  
15 concluded with respect to this issue?

16 MR. SPEIGHTS: Excuse me, counsel, which  
17 court?

18 MR. CAMERON: Pardon?

19 MR. SPEIGHTS: Which court? The trial  
20 court?

21 MR. CAMERON: The court in which -- what's  
22 the objection?

23 MR. SPEIGHTS: The objection to your  
24 question is unclear. You asked him what the  
25 court did and he has talked about both the trial

1 court and the supreme court and I want to know  
2 which court.

3 Q. (By Mr. Cameron) Do you understand,  
4 Mr. Mew, my question?

5 A. Well, you said the Privest court. There  
6 were two levels of decision in the Privest court: The  
7 Supreme Court of British Columbia and the Court of  
8 Appeal. Both courts dealt with the limitation issue  
9 and the conclusion ultimately of both courts was that  
10 the trial court made a finding which was upheld by the  
11 court of appeal. And the finding that the trial court  
12 made was that the date of installation was taken to be  
13 the date on which the limitation period started to  
14 run, notwithstanding the protest of the plaintiffs  
15 that they didn't -- they said that they didn't  
16 actually know of the qualities of the product that was  
17 installed. The court rejected that on the basis that  
18 the qualities of the products were notorious and well  
19 known by the plaintiffs or could have been had they  
20 exercised due diligence.

21 Q. And did the Privest trial court rely on  
22 any legal authority for that conclusion?

23 A. Yes. One of the cases the Privest court  
24 looked at was a decision of the Supreme Court of  
25 Canada in an insurance case called Johns-Manville

1 around 1970, I believe. And that was a case that had  
2 held in the context of an application for insurance  
3 where the insurers, by an asbestos company where the  
4 insurers purported to say you should have disclosed,  
5 you should have made full disclosure concerning the  
6 qualities of your product that an insurer in Quebec at  
7 that time would have known or would be deemed to have  
8 known everything they needed to know about asbestos  
9 and its qualities and the risks associated therewith.

10 Q. Okay. Now do you have an opinion,  
11 Mr. Mew, as to whether a Canadian claim in this  
12 bankruptcy could successfully avoid a limitations  
13 defense by arguing its claim was not discoverable?

14 A. It seems to me highly unlikely that a  
15 tenable argument could be made to that effect given  
16 the notoriety not only because of the Johns-Manville  
17 decision, which is clearly out there, but in every  
18 province. And I've made references of this in my  
19 report. There is extensive legislation, health and  
20 safety legislation, occupational legislation, workers'  
21 compensation legislation, building regulations and  
22 standards that deal with the use of asbestos, the  
23 installation of asbestos in different environments.  
24 It would be very difficult to ignore the existence of  
25 that widely available and disseminated information.

1 (Exhibit 5 was marked for identification.)

2 Q. (By Mr. Cameron) Show you what's been  
3 marked as Exhibit 5. Is that a true and correct copy  
4 of the compilation of the applicable regulations that  
5 you just referenced?

6 A. Yes.

7 MR. SPEIGHTS: I believe you need to lay a  
8 better foundation than that, Mr. Cameron. I  
9 don't know if he prepared this. I object to the  
10 foundation.

11 Q. (By Mr. Cameron) Is Exhibit 5 the  
12 compilation that you had attached to your expert  
13 report?

14 A. It is.

15 Q. And is Exhibit 5 was that compiled by you?

16 A. It was compiled on my instructions.

17 Q. Okay. As part of your expert report?

18 A. Yes. I didn't personally compile it. I  
19 reviewed it after researchers in my office had done  
20 the necessary database and statutory searches.

21 Q. Okay. And after your review did you  
22 include it within your expert report?

23 A. Yes.

24 MR. CAMERON: Okay. Let's take a couple  
25 of minutes break.

1 (Recess from 11:46 a.m. to 11:57 a.m.)

2 Q. (By Mr. Cameron) Mr. Mew, do you have an  
3 opinion as to the state of the law in Canada with  
4 respect to whether a claim seeking a recovery of cost  
5 to remove or manage asbestos-containing materials in a  
6 building is a claim for pure economic loss?

7 A. Yes, I have a view.

8 Q. And what is that opinion? And you can  
9 refer to Page 10 of your report if you would like.

10 A. My view is that such claims are indeed  
11 properly characterized as claims of pure economic  
12 loss.

13 Q. And what's the basis for that?

14 A. It's the Winnipeg Condominium and the  
15 Privest cases are the source of that view.

16 Q. Are you aware of any contrary authority in  
17 Canada?

18 A. No.

19 Q. Do you have an opinion as to the state of  
20 the law in Canada as to when the limitation periods  
21 would begin to run for such claims?

22 A. Yes. Such claims, claims of pure economic  
23 loss in both, well, in respect to the ultimate  
24 limitation period and the normal limitation periods  
25 the time would start to run from the date of

1 installation.

2 Q. And you're aware of any contrary authority  
3 for that position?

4 A. No, I'm not aware of any contrary  
5 authority. I'm aware of attempts that have been made  
6 as they were in Privest to say that time starts to run  
7 from a later date because of the application of the  
8 discoverability principle but I'm not aware of any  
9 cases in which plaintiffs have succeeded in making  
10 that argument. They certainly didn't in Privest.

11 Q. I would like to turn to the application of  
12 the normal limitations period to several of the  
13 statutes. And looking first at the limitations  
14 statute for Alberta what is the normal limitations  
15 period in that statute?

16 A. Since the current Alberta Act came into  
17 force in 1999 it's been two years.

18 Q. Okay. And to avoid the running or to  
19 postpone the running of the two-year statute from the  
20 date of installation what would the claimant have to  
21 show in your opinion?

22 A. The claimant would have to show that they  
23 had not discovered or could not with the exercise of  
24 reasonable diligence have discovered the existence of  
25 a claim or a cause of action.

1 Q. And does the statute provide what they  
2 would have to show --

3 A. Yes. The statute --

4 Q. -- specifically?

5 A. Yes. The statute has a formulation. It  
6 says that, and it's Section 3, Subsection (1), that  
7 the limitation period is two years after the date on  
8 which the claimant first knew or in the circumstances  
9 ought to have known that the injury for which the  
10 claimant seeks a remedial order had occurred, that the  
11 injury was attributable to the conduct of the  
12 defendant, and that the injury assuming liability on  
13 the part of the defendant warrants bringing a  
14 proceeding. They would have to show that they knew or  
15 that they did not know or should not be deemed to have  
16 known those three things. One of those three things.

17 Q. And do you have an opinion whether in a  
18 Canadian court a claimant would be able to meet that  
19 burden here?

20 A. In my opinion it's highly unlikely.

21 Q. I would like to turn to the limitations  
22 statute in Ontario, if you would. Does Ontario's  
23 limitation statute have an ultimate limitations  
24 period?

25 A. It did not at the time.

1 Q. Okay.

2 A. It did not in 2001.

3 Q. And what is the normal limitations period  
4 in the Ontario statute?

5 A. Six years.

6 Q. Six years from when?

7 A. Six years from when the cause of action  
8 arises.

9 Q. Okay. And for the pure economic loss  
10 claim involving asbestos in buildings when would that  
11 period begin to run?

12 A. It would be six years from the date of  
13 installation in my opinion.

14 Q. And is the discoverability principle  
15 available to a claimant in Ontario?

16 A. As a matter of common law of construction,  
17 yes.

18 Q. It's not by statute?

19 A. No.

20 Q. And what would a claimant in Ontario have  
21 to show to postpone the running of the statute?

22 A. Essentially the same thing as any other  
23 provinces. They would have to show that they either  
24 did not know or through the exercise of reasonable  
25 diligence could not have known the existence of the



1 cause of action.

2 Q. Okay. And do you have an opinion whether  
3 in a Canadian court an Ontario claimant would be able  
4 to meet that burden here?

5 A. Again in my view it's highly unlikely.

6 Q. And could you look at the British Columbia  
7 limitation statute?

8 A. Yes.

9 Q. And what is the normal limitation period  
10 in that statute?

11 A. Six years.

12 Q. Six years from when?

13 A. It's six years from the date on which the  
14 right to bring the action arose.

15 Q. And what would the defendant have to show  
16 to establish a limitations defense?

17 A. Well, in British Columbia the  
18 discoverability principle is -- sorry, what would the  
19 defendant have to do?

20 Q. Defendant, yes.

21 A. A defendant would simply plead that more  
22 than six years had passed between the time that the  
23 wrong occurred and the commencement of the proceeding.

24 Q. And did the Privest decision address this  
25 normal limitations period in the British Columbia

1 statute?

2 A. Yes, it did.

3 Q. And what did the Privest court conclude --  
4 trial court conclude on this issue?

5 A. The trial court concluded that time  
6 started to run from the date of the installation.

7 Q. And is the discoverability principle  
8 available to the claimant in British Columbia?

9 A. Effectively yes, through a mechanism known  
10 in the British Columbia statute as postponement.

11 Q. Is that a separate statute?

12 A. No, it's part of the limitation statute.

13 Q. And what does the postponement part of the  
14 limitation statute provide a claimant has to  
15 demonstrate to postpone the running of the normal  
16 limitations period?

17 A. It requires a plaintiff to demonstrate  
18 that the plaintiff did not know the identity of the  
19 defendant and the facts within the plaintiff's means  
20 of knowledge were not such that a reasonable person  
21 knowing those facts and having taken the appropriate  
22 advice that a reasonable person would seek on those  
23 facts would regard those facts as showing that a cause  
24 -- that an action on a cause of action would have a  
25 reasonable prospect of success.

1                   So in other words, I'm looking at Section  
2   6, Subsections (3) and (4) of the act, but in essence  
3   it's the same standard as the discoverability rule.  
4   The plaintiff would have to show that they didn't know  
5   and shouldn't reasonably have known that they could  
6   maintain a claim.

7           Q.     And then further on I think on the next  
8   page of your report you go on to give the opinion of  
9   what a claimant in this matter would have to show to  
10   invoke the postponement provision?

11          A.     The claimant would have to have  
12   demonstrated that it could not reasonably have known  
13   that Grace was a potential defendant and the facts  
14   from which it could be concluded that a successful  
15   action could be brought against Grace were not  
16   reasonably within the claimant's knowledge prior to  
17   April the 2nd, 1995, which would be six years before  
18   the bankruptcy filing.

19          Q.     Okay. And do you have an opinion as to  
20   whether discoverability argument under the British  
21   Columbia statute would be successful here?

22          A.     I have an opinion and my opinion is that  
23   it would not be successful. Postponement cannot  
24   successfully invoked in this case or these cases.

25          Q.     And is that the opinion that's provided in

1 your December 21, 2006 report?

2 A. Yes, on Page 24.

3 Q. And the opinions that you've provided here  
4 today are those opinions also contained in your  
5 December 21, 2006 report?

6 A. Yes, they are.

7 MR. CAMERON: That's all I have.

8 EXAMINATION

9 BY MR. SPEIGHTS:

10 Q. Mr. Mew, I have a few questions for you  
11 but in order to expedite matters I want to tell you  
12 that I am not endeavoring to question you or  
13 cross-examine you on the ultimate statute of  
14 limitations. So if I trespass into that area quickly  
15 tell me that I have trespassed and I will quickly move  
16 away. It's not my intent to do so. You said early on  
17 that a factual situation was presented to you and then  
18 shortly thereafter you said you were given a number of  
19 assumptions. Were either these facts or these  
20 assumptions given to you in writing?

21 A. As I sit here I can't recall. Unless I  
22 faithfully transcribed something that was essentially  
23 dictated to me over the phone I would have to assume  
24 that at some point in time that this was reduced to  
25 writing, the instructions were reduced to writing but

1 I don't recall as I sit here.

2 Q. Let me make sure you understand my  
3 question. I'm not inquiring as to whether you  
4 recorded something that was orally given to you. My  
5 question is did somebody give you something in writing  
6 either as to facts or assumptions? Do you believe  
7 that it is possible that somebody actually gave you  
8 something in writing related to facts or assumptions  
9 they were asking you to assume or have?

10 A. It's possible but I don't have a specific  
11 recollection.

12 Q. Well for the record if anything was given  
13 to, Mr. Mew, as an expert either assumptions or facts  
14 in writing I would request a copy of that, of those  
15 pieces of paper. Would it be fair to say that  
16 whatever facts or assumptions were given to you were  
17 given to you by Grace's attorneys?

18 A. Yes.

19 Q. And that would include both one or more  
20 lawyers from Kirkland And Ellis and one or more  
21 lawyers from Reed Smith?

22 A. Yes.

23 Q. You said early that there were some  
24 similarities to the claims here and the claims in  
25 Privest. Do you recall that?

1 A. Yes.

2 Q. Have you examined the claims here?

3 A. I have seen some of the claims forms that  
4 your clients filled out but have I examined each one,  
5 no.

6 Q. Have you reviewed any expert reports  
7 provided by the Canadian claimant's experts in this  
8 matter?

9 A. No.

10 Q. Have you examined any trial briefs or  
11 summaries prepared by counsel representing the  
12 Canadian claimants as to the basis of their claims?

13 A. Trial briefs, no. I have seen various --  
14 I'm not sure what you would call them. I would call  
15 them interlocutory submissions that have been made by  
16 both sides but I haven't seen anything that  
17 comprehensively sets out.

18 Q. Have you seen any trial transcript or  
19 published case or speech or anything else from me or  
20 members of my firm describing what the basis of our  
21 Canadian claims are going to be when we go to trial in  
22 this case?

23 A. Certainly haven't read any of your  
24 speeches. Other than the sources that I've just  
25 referred to were some briefing documents I don't

1 believe I have seen. There aren't -- one of the  
2 disabilities we suffer under in this case there aren't  
3 pleadings in the way that, certainly in the format  
4 that I would be familiar with and I haven't seen  
5 anything like that.

6 Q. Would it be fair to say, and I'm not being  
7 critical when I say this, but would it be fair to say  
8 that when you testify that there are similarities  
9 between the claims here and the claims in Privest you  
10 are relying upon what's been provided to you by  
11 Grace's counsel to characterize and describe the  
12 claims of the Canadian claimants here?

13 A. That and my understanding of the Privest  
14 case, yes.

15 Q. Okay. Now would you agree with me that  
16 the Privest case did not involve the ultimate  
17 limitations?

18 A. I would agree with you.

19 Q. Would you agree with me that Winnipeg did  
20 not involve the ultimate limitations?

21 A. I agree with that, too.

22 Q. Are you telling me that if a building  
23 owner had Grace's material placed in its building in  
24 1970 that it should have brought a lawsuit, let's take  
25 it where there's a two-year statute of limitations, by

1 1972 in economic loss?

2 A. Yes.

3 Q. And if a building --

4 A. I say yes but there's a slight caveat to  
5 that because, of course, the Winnipeg Condominium case  
6 hadn't been handed down by then. And certainly  
7 attempts have been made since, attempts have been made  
8 to argue. The Winnipeg Condominiums represented a  
9 change in the law and that that should give plaintiffs  
10 a second chance because they hadn't realized they  
11 could pursue this claim for pure economic loss before  
12 the Winnipeg Condominium case came down. The  
13 plaintiffs who made those arguments have not been  
14 successful with them so the answer is yes.

15 Q. Well let's look at it both ways. Suppose  
16 a clairvoyant plaintiff's lawyer in Canada brought a  
17 case before 1972 claiming that what would turn out to  
18 be the Winnipeg decision was the law back then, what  
19 would it have to prove to recover? The case is now  
20 timely brought. What would it have to have proof to  
21 recover?

22 A. They would have to prove that a wrong had  
23 occurred and that a compensable injury had resulted.

24 Q. And what kind of injury would they have  
25 shown before 1972 or what kind of injury were they



1 required to show before 1972 if Winnipeg was the law  
2 at that period of time?

3 A. Well, if Winnipeg was the law at that  
4 period of time they would have to show a potentially  
5 injurious product had been installed and that economic  
6 consequences would flow from that.

7 Q. So they could have prevailed if it was  
8 just a potential injury and not an actual injury; is  
9 that your testimony?

10 A. Well the whole of the Winnipeg Condominium  
11 is that you don't have to prove actual damage to  
12 property or injury to persons in order to recover  
13 damages.

14 Q. I understand that but, again, is all that  
15 the plaintiff back in 1972 all he had to do was to  
16 show there was a potential injury under Winnipeg?

17 A. Well, you have to show the product as  
18 harmful and you would have to satisfy the court that  
19 there was a basis for remedying that harm.

20 Q. Well if you had to show it is harmful  
21 wouldn't you kick in the rest of the Winnipeg decision  
22 that recognized in Winnipeg that you did not have to  
23 bring the case within, we'll say two years, two years  
24 of installation?

25 A. Well the difference with the products that

1 we're dealing with is that the court has, the court in  
2 Privest has held applying the discoverability  
3 principles that the date of installation and the date  
4 on which time would be deemed to run are one in the  
5 same.

6 Q. Well, we're going to get to Privest, I'll  
7 assure you. I will not let you leave and return to  
8 Canada without discussing Privest a few minutes but  
9 I'm back at Winnipeg. I'm not in an asbestos building  
10 case. I'm just with Winnipeg and economic loss cases.  
11 Doesn't the Winnipeg case hold that where there is  
12 harm where you can prove the product is harmful the  
13 statute of limitations is either suspended or delayed  
14 until some point in time past installation?

15 A. Well Winnipeg, that's not my understanding  
16 of Winnipeg but I would be happy to be referred by you  
17 to the case.

18 Q. Well, is it your understanding without  
19 pulling out the case that under Winnipeg in all  
20 circumstances cases in economic loss must be brought  
21 within a certain period of time from installation?

22 A. The main holding with Winnipeg is the  
23 sustainability of the claim for pure economic loss.  
24 And the reason it's a leading authority is because of  
25 that not because of any limitation issues that may or

1 may not have been associated. It's not primary. It's  
2 not really a limitations case per se.

3 Q. Well under the Winnipeg case does the  
4 court provide authority for bringing a case, an  
5 economic loss where the product is shown to be  
6 harmful?

7 A. Yes.

8 Q. And in that situation in your opinion are  
9 you telling me that the statute of limitation still  
10 runs from installation?

11 A. It depends on what the product is. It  
12 depends on what the circumstances are.

13 Q. Are you telling me that in all the  
14 situations where you have a case of economic loss  
15 where the product is harmful that the statute  
16 commences to run upon installation?

17 A. No.

18 Q. Thank you. Then we get to Privest. I  
19 believe in Privest the plaintiff tried to both show  
20 economic loss and property damage; is that correct?

21 A. I think that is correct, yes.

22 Q. And obviously the plaintiff lost at the  
23 trial level. Now for the record the trial level was  
24 one judge, Judge Drost, trying a lawsuit involving the  
25 plaintiffs and Grace; is that correct?

1 A. That's correct.

2 Q. And Judge Drost issued a lengthy opinion;  
3 correct?

4 A. He did.

5 Q. And that opinion went to the Court of  
6 Appeals for British Columbia; correct?

7 A. It did.

8 Q. And you have reviewed the Court of Appeals  
9 decision both in connection with your affidavit and  
10 probably in preparation for this deposition, haven't  
11 you?

12 A. I have to confess I have not read it again  
13 since we last met but I have reviewed it on numerous  
14 occasions over the years.

15 Q. I'm going to mark a copy of the Court of  
16 Appeals decision for the record after you identify it  
17 unless you have one with you. Do you have one with  
18 you?

19 A. I do not.

20 MR. SPEIGHTS: This copy, Mr. Cameron, I'm  
21 going to just have her mark it Exhibit 6 but I  
22 don't want it actually placed on the exhibit yet  
23 because there is some yellow highlighting on it  
24 and when we copy it the yellow highlighting  
25 won't come out and I want one that's pure when

1 we actually mark it.

2 Q. (By Mr. Speights) I'm going to give you  
3 the one with the yellow highlighting. Do you  
4 recognize that as the Court of Appeals decision in  
5 Privest?

6 A. Yes, I do.

7 Q. Now if you would turn to me on page --  
8 actually it doesn't have a page but Paragraph 29. The  
9 top line says: Did the plaintiffs prove that MK-3 is  
10 a dangerous product when disturbed? Do you see that?

11 A. Yes, I do.

12 Q. And would you agree with me that about  
13 another line or two down there that the court says,  
14 this is the Court of Appeals said: Air sample during  
15 renovations would have reduced the evidence one way or  
16 the other but the plaintiffs did not perform those  
17 tests.

18 A. That's what it says.

19 Q. Okay. And then if you would refer to the  
20 very last page on the opinion under the heading of 35  
21 the Court says: There is evidence on both sides of  
22 the issue. Drost J. found that the plaintiffs had not  
23 proven their case. Did I read that correctly?

24 A. You did.

25 Q. And that was the finding of the Court of

1 Appeals that the plaintiffs down below did not prove  
2 their case; isn't that correct?

3 A. On the issue that's under discussion, yes.

4 Q. Well, in the next sentence it says in our  
5 opinion the plaintiffs are asking us to reweigh the  
6 evidence and make a different choice as to expert  
7 opinion. This we cannot do. As we have said the  
8 plaintiffs had the opportunity to sample the air and  
9 demonstrate conclusively that when disturbed the MK-3  
10 is a dangerous product. In the end, the trial judge  
11 was not persuaded by the methods of proof adopted by  
12 the plaintiffs on this crucial issue of fact. We are  
13 unable to find that he committed any palpable or  
14 overriding error in his conclusion on dangerousness.  
15 Did I read that correct?

16 A. Yes, you did.

17 Q. And that was a holding of the Court of  
18 Appeals in the Privest case; correct?

19 A. Yes.

20 Q. You're not telling the court today are  
21 you, Mr. Mew, that the court of appeals for Canada  
22 decided that not one inch of Mono-Kote anywhere in  
23 Canada is unsafe, are you?

24 A. No. The Court of Appeal, which reviews  
25 the decision of a trial court, it's the Court of

1 Appeal of British Columbia, not the Court of Appeal in  
2 Canada. But it reviewed the decision of the trial  
3 court. It the applied a threshold of review, which I  
4 assume is similar to the threshold of review that  
5 appellate courts in this country apply, where they  
6 essentially decline to retry cases unless there has  
7 been a palpable or overriding error made by the trial  
8 judge and that's what they're doing here.

9 Q. And certainly in this case the court did  
10 not even consider either the trial court or the Court  
11 of Appeals did not consider other Grace asbestos  
12 containing products besides MK-3, did they?

13 A. Trying to recall whether there was any  
14 product other than MK-3 that was the subject of the  
15 trial court's decision but I think the answer to your  
16 question is that's right. They did not consider other  
17 Grace products; correct.

18 MR. SPEIGHTS: I don't want to take a  
19 break because you'll break. I'm just stepping  
20 down the hall.

21 (Off the record.)

22 MR. SPEIGHTS: Thank you, Mr. Mew.

23 THE WITNESS: That's it?

24 MR. SPEIGHTS: That's it. Again, I  
25 reserve my right.

1 MR. CAMERON: Even though he asked you  
2 questions on it and he's waived it but he's  
3 going to reserve his right again.

4 MR. SPEIGHTS: I reserve my right again to  
5 examine Mr. Mew on ultimate limitations should  
6 the motion of Grace be granted to amend its  
7 objections.

8 MR. CAMERON: And our position is the same  
9 that ultimate limitations has been raised. He  
10 has been deposed on this previously and we'll  
11 deal with that with the court if and when  
12 Mr. Speights raises that argument.

13 MR. SPEIGHTS: Thank you.

14 (Exhibit 6 was marked for identification.)

15 (Whereupon, the deposition was concluded  
16 at 12:26 p.m.)

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C E R T I F I C A T E

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4 STATE OF GEORGIA:

5 COUNTY OF FULTON:

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I hereby certify that the foregoing

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transcript was taken down, as stated in the

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caption, and the questions and answers thereto

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were reduced to typewriting under my direction;

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that the foregoing pages 1 through 54 represent

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a true, complete, and correct transcript of the

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evidence given upon said hearing, and I further

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certify that I am not of kin or counsel to the

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parties in the case; am not in the regular

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employ of counsel for any of said parties; nor

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am I in anywise interested in the result of said

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case.

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This, the 15th day of May, 2007.

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Abigail M. Pace, RPR, CCR-B-1484

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## COURT REPORTER DISCLOSURE

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia which states: "Each court reporter shall tender a disclosure form at the time of the taking of the deposition stating the arrangements made for the reporting services of the certified court reporter, by the certified court reporter, the court reporter's employer, or the referral source for the deposition, with any party to the litigation, counsel to the parties or other entity. Such form shall be attached to the deposition transcript," I make the following disclosure:

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Abigail M. Pace, RPR, CCR-B-1484